

REVISED FINAL STATEMENT OF REASONS:

This action proposes to amend provisions governing the Private Architectural and Engineering Firm Selection Policy, within the California Department of Corrections (Department). This provision provides direction for the Selection of Professional Consulting Services, as required by the Department.

California Code of Regulations Section 3000, is being amended to broaden the existing definitions of "Firm" and "Small Business Firm." Section 3000 includes existing definitions of the term "Firm." The proposed definition includes landscape architecture, environmental services, land surveying or construction project management. The addition of these types of firms is meant to broaden the scope of firms/businesses from which the Department may select to perform professional consulting services.

Section 3000 also includes an existing definition of "Small Business Firm." This action proposes to amend that definition to better define a small business firm regarding professional consulting services with whom the Department may do business.

The existing heading of Title 15, Article 7 "Private Architectural and Engineering Firm Selection Policy" has been amended and renamed to read "Selection of Professional Consulting Services." The heading is changed to be less specific so to include other professional consulting firms along with private architectural and engineering firms when the Department is requesting submittal of qualification for services.

Additionally, this provision is amended pursuant to Penal Code (PC) Section 5055. This PC section states that whenever power is granted to the Director of Corrections or a duty is imposed upon the Director, the power may be exercised or the duty performed by a Deputy of the Director or by a person authorized pursuant to law by the Director. Therefore, for clarification purposes, the term "or designee" is being added to the language.

The proposed action makes optional the departmental procurement services choice of retaining a firm for one year or longer to complete the contracted services. Specific language is amended to be consistent with the language used throughout Article 7.

This action allows the Department to determine, in the best interest of the State, how to proceed if fewer than three qualified submittals for the selection of Architects or Engineers, or other professional consulting firms are received.

The Department must determine that no reasonable alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

Section 3000 is amended to include additional entities within the definition of the word "Firm." Those additional entities include landscape architecture, environmental services, land surveying and construction project management. It is necessary to include these new entities into the bid process application because it will enable the Department to broaden its bid potential based on a larger and more varied pool of professional consulting firms from which the Department may choose.

Also, the definition "Small Business Firm" has been amended to delete the language defining this term as "one having no more than 15 personnel in the present organization, whether such personnel are professional, technical, clerical or other." Pursuant to Government Code

Section 14837, a small business firm is not only based upon the number of personnel, but also includes where the principal office is located and where the officers are domiciled. Additionally, a small business firm is based upon the maximum dollar volume generated and may vary from industry to industry reflecting differing characteristics of such industries. This definition is based on GC 14837; however, it is not a word-for-word definition. The GC specifies that a small business has 100 or fewer employees and average annual gross receipts of ten million dollars or less over the previous three years. It is the intention of the Department to carry out the full intent of the GC. The language “vary from industry to industry to the extent necessary to reflect differing characteristics of such industries” was based on GC 4525. The exact language from GC 14837 was not duplicated in the definition of small business in the Title 15; however, the definition was combined with GC 4525 to include the word “Firm,” which includes different industries that may do business with the Department.

Additionally, Government Code Sections 4525 and 14837, are added as a cited authority to the Note section of Section 3000. These sections define various terms used throughout these provisions.

Article 7 Heading is amended and renamed from “Private Architectural and Engineering Firm Selection Policy” to “Selection of Professional Consulting Services.” This is necessary so that the Department may include other professional consulting firms along with private architectural and engineering firms when requesting submittal of bids.

Section 3454 is amended and renamed from “Private Architectural and Engineering Firm Selection Policy” to “Selection of Professional Consulting Services.” The heading is changed to be less specific so to include other professional consulting firms along with private architectural and engineering firms when the Department is requesting submittal of qualification for services.

Subsection 3456(a) has been amended for clarification purposes to add the language “or designee” granting the Director or designee the power as provided for in PC Section 5055.

Subsections 3456(b) through (c) are unchanged.

Subsection 3456(d) is amended to delete the word “will” and to add the word “may” which makes optional the departmental procurement services choice of retaining a firm for one year or longer to complete the contracted services. Additionally, the word “services” replaces the word “work.” This change is specifically made to be consistent with the word used in subsection 3454(a).

Subsections 3456 (e) through (f) are unchanged.

Section 3457 is amended to add the language “or designee” granting the Director or designee the power as provided for in PC Section 5055. This is necessary for clarification purposes.

Section 3458 is amended to add the language “or designee” granting the Director or designee the power as provided for in PC Section 5055. Additionally, this section is amended in order for the Department to determine, in the best interest of the State, whether or not to proceed with the bid process or readvertise if fewer than three qualified submittals for the selection of Architects or Engineers are received. This will allow the choice of either: 1) continuing the bid process without delay if the Department finds that the Architects or Engineers who have submitted bids are qualified and are representative of the industry; or

2) to evaluate the need and the cost of readvertising for a larger number of bidders which better represent the Architecture and Engineering industry. This is necessary due to a potentially lengthy and costly bid process if readvertising is deemed necessary.

The Department routinely advertises for consulting services to approximately 20 different Architect/Engineering type firms. The timeframe for this varies; however, the bid process can take approximately 3-5 months or longer depending on the individual specifications of the project. If fewer than three bids are received, the Department may choose to continue the bid process if the bidders meet the following minimum criteria: are qualified; are representative of the industry; or have previously contracted with the Department and/or have performed work on a similar project.

For example, the Department has contracted in the past to build emergency dorms utilizing various contractors. At various times throughout the building of the emergency dorms, the Department advertised for subcontractors for smaller engineering-type jobs. If fewer than three bids were received and the Department had to readvertise, the project could be delayed for months, thus not complying with the court order to provide emergency dorms for an overcrowded prison. In the case of such an emergency, the proposed regulation would enable the Director to determine, in the best interest of the State, whether or not to proceed with the most qualified industry representatives or to readvertise and possibly delay the project.

Additionally, this regulation is necessary due to the current State budget deficit. Readvertising would not be cost effective if the bidders meet the minimum criteria as previously stated.

Section 3459 is amended to add the language “or designee” granting the Director or designee the power as provided for in PC Section 5055. This is necessary for clarification purposes.

Section 3460 is amended to add the language “or designee” granting the Director or designee the power as provided for in PC Section 5055. This is necessary for clarification purposes.

Section 3462 is amended to add the language “or designee” granting the Director or designee the power as provided for in PC Section 5055. This is necessary for clarification purposes.

Section 3463 is amended to add the language “or designee” granting the Director or designee the power as provided for in PC Section 5055. This is necessary for clarification purposes.

Section 3464 is amended to add the language “or designee” granting the Director or designee the power as provided for in PC Section 5055. This is necessary for clarification purposes.

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

ASSESSMENTS, MANDATES AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government; or Federal funding to the State, or private persons. It is also determined that this action will affect small businesses; however, based on past practice and experience, the Department determines this action will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

PUBLIC HEARING COMMENTS:

Public Hearing: Held May 13, 2002 at 9:00 a.m.

No one attended the Public Hearing.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS:

COMMENTS #1:

Comment A: Commenter contends that the Director or designee shall attempt to negotiate a contract with the best-qualified firm. Should they be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at fair and reasonable compensation, negotiations with that firm shall be terminated. Commenter contends that inmates at Pelican Bay State Prison (PBSP) must go through a business called "Walkenhorst" to purchase their televisions and radios. He contends that prisoners have to pay close to \$250 for a 13-inch color TV and that they can purchase the same TV at a regular store on the outside for \$150 or less. Commenter contends that inmates are forced to pay an outrageous price for a TV at a business that the institution has a contract with when they can buy it cheaper at another business. Commenter contends that if inmates don't go through the contracted business then they will not be able to purchase any appliances.

Accommodation: None.

Response A: Department contends that although the above comment does regard an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment does not pertain to the specific changes at hand in the proposed regulations. The Department further contends that the comment is personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment. The Department contends that the proposed regulations are regarding Professional Consulting Services, such as landscape architecture, environmental

services or construction project management, and are not regarding contract with vendors to purchase appliances.

Comment B: Commenter questions whether or not the contracted vendor is the best business qualified to provide inmate's service at a reasonable price. He asks what percentage does the Department make from sales of all appliances. He contends that it is unfair to inmates to have to pay \$250 for a TV. He requests that the Department allow inmates at PBSP to purchase appliances at a cheaper price.

Accommodation: None.

Response B: See Commenter #1, Response A.